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Testimony before the Human Services Committee

on the Governor's Budget Recommendations, S.B. 17

February 18, 2016

Good afternoon, my name is Kristen Noelle Hatcher. I am an attorney at Connecticut Legal Services, Inc., a non-profit civil law firm dedicated to helping low-income people access justice. I manage our Public Benefits unit. I am testifying today on behalf of our clients and the many other low-income residents of this state.

We oppose Section 19 of SB 17, which would further limit access for poor children to orthodontia services.

Under the recently created statutory scheme, a child must have a certain score on the Salzmann Assessment to be eligible for orthodontic treatment. This assessment was never intended to be used for the purpose of determining "medical necessity," nor was it ever intended to be used in the Medicaid program, but for commercial programs in the 1960s. There is no relationship between a Salzmann score and the child's actual medical need for orthodontic treatment. [1]

For years, DSS used a regulation that employed this arbitrary scale to determine eligibility for orthodontic treatment.[2] Last year, the regulation became a statute and it changed the standard from 24 points to a higher standard of 26.

When trying to use our limited funds wisely, it is tempting to look upon orthodontia as a frill – just a cosmetic procedure for poor kids who want to have a pretty smile in their school pictures. That is not an accurate perception of orthodontic treatment, as the many qualified orthodontists in Connecticut will attest. Orthodontia corrects medically determinable oral deviations that have a negative impact on speech, on a child's ability to eat food, and which cause pain.

[1] J.A. Salzmann, D.D.S., F.A.P.H.A., Orthodontics in Public Health and Prepayment Programs in Orthodontics in Daily Practice 628 (1974)

[2] Two examples of the arbitrariness of this test:

- Under the Assessment's instructions, a crowded tooth receives a score of one point, recognizing that it is a condition which is not normal and needs correcting. A rotated tooth receives a score of one point, recognizing that it, too, is a condition which is not normal and needs correcting. But a tooth which is both crowded and rotated receives not two points, but only one point. The assessment deliberately ignores one of the two oral deviations which require correction.

- The Assessment assigns no points at all for tooth pain or excessive pressure.

As is done with every other medical treatment covered by Medicaid, coverage determinations should be made using the medical necessity definition codified in 2010 by the legislature in C.G.S. Sec. 17b-259b, which defines "medical necessity" specifically for the Medicaid program.

> C.G.S. 17b-259b provides..."medically necessary" and "medical necessity" mean those health services required to prevent, identify, diagnose, treat, rehabilitate or ameliorate an individual's medical condition, including mental illness, or its effects, in order to attain or maintain the individual's achievable health and independent functioning provided such services are: (1) Consistent with generally-accepted standards of medical practice that are defined as standards that are based on (A) credible scientific evidence published in peer-reviewed medical literature that is generally recognized by the relevant medical community, (B) recommendations of a physician-specialty society, (C) the views of physicians practicing in relevant clinical areas, and (D) any other relevant factors; (2) clinically appropriate in terms of type, frequency, timing, site, extent and duration and considered effective for the individual's illness, injury or disease." This definition was carefully crafted by a select committee authorized by the legislature. The committee was comprised of knowledgeable providers, DSS representatives, and others and they created a legally sufficient definition of "medical necessity" for the Department of Social Services to use in administering the Medicaid program, for **all** categories of medical services."(emphasis added).

This definition also takes care to ensure that cosmetic services are not covered under this detailed statutory standard.

> "(3) not primarily for the convenience of the individual, the individual's health care provider or other health care providers; (4) not more costly than an alternative service or sequence of services at least as likely to produce equivalent therapeutic or diagnostic results as to the diagnosis or treatment of the individual's illness, injury or disease; and (5) based on an assessment of the individual and his or her medical condition.[3] "

The 2015 law[4] that provides for the Salzmann assessment as a measure of medical necessity directly conflicts with the standard of medical necessity in 17b-259b, which applies to **every other category of services under Medicaid.** There is no justification for such a heightened standard for this one category of services needed by poor children.

Accordingly, we strongly oppose the increase in the numerical requirement for receiving orthodontia under the statute from 26 to 29 points. We further request that the legislature change C.G.S. § 17b-282e so that it is in harmony with the broader medical necessity statute passed by the legislature in 2010. [5]

The need for a separate, stricter test for one category of medical treatment has no basis in Medicaid law. It creates confusion in the Medicaid program, but, more importantly, it denies medically necessary treatment to poor children whose conditions would qualify under the medical necessity definition in C.G.S. Sec. 17b-259b.

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[3] C.G.S. 17b-259b

[4] C.G.S. 17b-282e

[5] The easiest method of achieving statutory harmony is to repeal C.G.S. § 17b-282e so that C.G.S. Sec. 17b-259b applies to all categories of Medicaid services, as it was designed to do.
In the alternative, the legislature should add the following language, which references the Medicaid medical necessity statute, to C.G.S. § 17b-282e:

> If a recipient's score on the Salzmann Handicapping Malocclusion Index is less than twenty-six [or twenty-nine] points, the Department of Social Services shall consider additional substantive information when determining the need for orthodontic services, based on the definition of medical necessity applicable to all Medicaid services in Conn. Gen. Stat. Section 17b-259b.